TRUSTEES OF LEONG SAN TONG KHOO KONGSI (PENANG) REGISTERED & ORS.

v.

S.M. IDRIS & ANOR.

SUPREME COURT, KUALA LUMPUR
ABDUL HAMID OMAR LP
LEE HUN HOE CJ (BORNEO)
GUNN CHIT TUAN SCJ
[CIVIL APPLICATION NO. 12 AND 22 OF 1987]
16 DECEMBER 1989

CIVIL PROCEDURE: *Order 52 of the Rules of the High Court 1980 - Section 13(1) of the Courts of Judicature Act 1964 - Article 126 of the Federal Constitution - Balance to be struck between Article 10 of the Federal Constitution and need to protect the dignity and integrity of the Supreme Court - Need to maintain public confidence in the judiciary - Whether criticisms of a judgment of the Supreme Court is within the limits of reasonable courtesy and good faith - Question of fact - Local conditions must be looked at - Whether respondents had gone outside the limits of reasonable courtesy and good faith.*

The applicants sought orders from the Supreme Court to commit the respondents to prison for contempt of the Supreme Court pursuant to O. 52 of the Rules of the High Court 1980, read together with s. 13(1) of the Courts of Judicature Act 1964, on account of certain statements made by the respondents, in respect of a judgment of the Supreme Court given on 27 April 1987 in Supreme Court Civil Appeal No. 117 of 1986 ("the judgment").

On 28 April 1987, the 1st respondent in the 1st application ("SM"), in his capacity as President of the Consumers Association of Penang issued a statement to the press entitled "Supreme Court decision may lead to lawlessness" ("the press statement"). The applicants contended that the press statement was a grave distortion of the judgment and suggested that the press statement contained various inferences, namely that the Supreme Court had acted irresponsibly, turned a blind eye, condoned the killing of a woman, had sanctioned the landowners disrespect and abuse of the legal process and that the decision was a charter for disrespect.

On the same day, the 2nd respondent in the 1st application ("Ooi") issued a press release entitled "Supreme Court decision has grave implications - Say Thean Teik Farmer" ("the press release"). At the hearing of the application the applicants indicated that they did not wish to proceed against Ooi. Ooi was discharged.

On 5 May 1987 at a meeting organised by the Consumers Association Penang, and the Thean Teik Residents Association at the Penang Chinese Town Hall, the 1st, 2nd and 3rd respondents in the 2nd application ("Mak", "MR" and "Chin" respectively) delivered certain speeches ("the speeches").

A part of Chin's speech, which was in Hokkien, and which was alleged to amount to contempt, was his reference to a Chinese saying that "money can make a ghost turn the grinder". The applicants contended that this suggested that the Supreme Court Judges might have been influenced by financial considerations and were susceptible to corruption. Chin in his affidavit in reply contended that he did not mean that the Supreme Court Judges were corrupt and that this is clear from what followed after his reference to the Chinese saying when he said "after the Penang High Court judgment the Supreme Court in Kuala Lumpur held a different view over the Poh Sim Siang's case... ."

Both MAK and MR are advocates and solicitors - the applicants said that the inferences from the speeches made by MAK and MR (which were in Bahasa Malaysia) (see text of decision for speeches) are that the Court acted recklessly and irresponsibly and in abuse of the process of the Court. They further submitted that the Supreme Court Judges were prejudiced, not gainfully employed and have not discharged or are in dereliction of their judicial duties and irresponsible and that the Judges lacked maturity, are inferior, incapable and have not kept up with the best standards of the Judges of the Indian Supreme Court. Another excerpt from the speech made by MR (accordingly to the applicants) inferred that the Supreme Court's decision was stupid, meaningless and that the Supreme Court sanctioned the lawlessness and disregard of the legal process and that they advocate lawlessness and are reckless and irresponsible. In reply the MKN and MR contended that the statements were meant for public interest and in good faith. They further contended that the language used was not judicious but stated that criticisms could not be contempt, that the speeches were made *bona fide*. They submitted that the Court should have the magnanimity to excuse intemperate language. They also submitted that both speakers were using a language to which they were not comfortable with.

Held:

[1] In this country there is a need to protect the dignity and integrity of the Supreme Court as well as the High Court which is recognised by Art. 126 of the Constitution and s. 13 of the Courts of Judicature Act. In considering the balance between the freedom of speech and the need to protect the integrity of the Supreme Court, in the interest of maintaining public confidence in the judiciary.

[2] As such, whether criticisms of a judgment are within the limits of good faith and reasonable courtesy must depend on the facts of each particular case and in determining the limits of reasonable courtesy the Court should not lose sight of local conditions.

[3] As against SM, the Court is of the view that the contents of the press statement did not amount to a contempt of Court - further SM had thereafter urged the Federal Government, etc., on the need to reform the tenancy laws. SM is therefore discharged.

[4] As against Chin, there is a possibility that his speech could be interpreted in either one of the ways contended by the opposing sides, bearing in mind that contempt proceedings are quasi-criminal in nature, the applicants have not proved their case beyond reasonable doubt. The benefit of the doubt should be exercised in favour of Chin and he is discharged.

[5] As against MKN and MR, their speeches could not be said not to have exceeded the bounds of reasonable courtesy and that they were made in good faith - they are both officers of the Court and are expected to uphold the dignity of the Court and the respect of the Judges. They have ridiculed the Court and brought it into disrepute.

[6] MKN and MR were ordered to pay a fine of RM5,000, in default 3 months imprisonment.

Cases referred to:
Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors. v. Poh Swee Siang [1987] CLJ (Rep) 404
Attorney-General & Ors. v. Arthur Lee Meng Kuang [1987] 1 MLJ 206
Reg. v. Gray [1900] 2 QB 36
Ambard v. Attorney General for Trinidad & Tobago [1936] AC 222
Reg. v. Commissioner of Police of the Metropolis Ex parte Blackburn (II) [1968] 2 QB 150
PP v. The Straits Times Press Ltd. [1949] MLJ 81
PP v. S.R.N. Palaniappa & Ors. [1949] MLJ 246
Lim Kit Siang v. Datuk Seri Dr. Mahathir [1987] CLJ (Rep) 168

Legislation referred to:
Courts of Judicature Act 1964, s. 13
Rules of the High Court 1980, O. 52

For the applicants - C. Abraham (R. Rajasingam & J.A. Yeoh with him)
For the 1st and 2nd respondent in 22/87 and 1st respondent in 12/87 - G.S. Nijar (M. Thayalan with him)
For the 2nd respondent in 12/87 - L.C. Loh
For the 3rd respondent in 22/87 - R.J. Manecksha

JUDGMENT

Abdul Hamid Omar LP:

There are two applications before this Court, firstly, Mahkamah Agung Permohonan Sivil No. 12 of 1987 (first application) between the trustees of Leong San Tong Khoo Kongsi and 2 Others, the applicants, and S.M. Idris and Ooi Chan Seong, the respondents; secondly, Mahkamah Agung Permohonan Sivil No. 22 of 1987 (second application) between the trustees of Leong San Tong Khoo Kongsi and 2 Others, the applicants, and Mohideen Abdul Kader and 3 Others, the respondents.

The events leading to these proceedings were that on 27 April 1987 the Supreme Court heard an appeal and gave judgment in respect of Supreme Court Civil Appeal No. 117 of 1986 *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors. v. Poh Swee Siang* [1987] CLJ (Rep) 404.

On the following day, S.M. Idris, the first respondent in the first application, issued a statement to the press entitled "Supreme Court decision may lead to lawlessness". On the same day, Ooi Chan Seong, the second respondent in the first application, issued a press release entitled "Supreme Court decision has grave implications - Say Tean Teik Farmers". Ten days later on 5 May 1987 at a meeting organised by the Consumer's

Association, Penang and the Thean Teik Residents Association at the Penang Chinese Town Hall, the 1st, 2nd and 3rd respondents in the second application delivered speeches exhibited in the record of appeal at pp. 90 to 92 (translation 93 to 95), 96 to 97 (translation 98 to 99) and 100 to 101 (in English translation).

Leave in respect of the first application and the second application were obtained on 14 May 1987 and 29 February 1988 respectively and an order for consolidation was made on 30 March 1988.

The applicants have sought an order of this Court to commit the respondents to prison for contempt of the Supreme Court pursuant to the provisions of O. 52 of the Rules of the High Court 1980 read with s. 13(1) of the Courts of Judicature Act 1964.

We would state orally and briefly the grounds of decision in these consolidated Supreme Court Civil Applications No. 12 and 22 of 1987 which we heard on Thursday.

This Court had the opportunity in April 1986, in *Attorney-General & Ors. v. Arthur Lee Meng Kuang* [1987] 1 MLJ 206 to consider and discuss the law relating to contempt of Court in which relevant authorities including *Reg. v. Gray* [1900] 2 QB 36; *Ambard v. Attorney General for Trinidad & Tobago* [1936] AC 222; *Reg. v. Commissioner of Police of the Metropolis Ex parte Blackburn (II)* [1968] 2 QB 150; *PP v. The Straits Times Press Ltd.* [1949] MLJ 81 and *PP v. S.R.N. Palaniappa & Ors.* [1949] MLJ 246 were referred and considered. It is not necessary for us on this occasion to consider those authorities again except to reiterate what has been said in those cases that in this country there is the need to protect the dignity and integrity of the Supreme Court as well as the High Court which is recognised by Art. 126 of the Federal Constitution and also by s. 13 of the Courts of Judicature Act 1964. In consideration a proper balance must be struck between the right of freedom of speech as provided for in Art. 10 of the Federal Constitution and the need to protect the dignity and integrity of the Supreme Court in the interest of maintaining public confidence in the judiciary. In the light, of these authorities it is established, *inter alia*, that whether a criticism of a judgment is within the limits of reasonable courtesy and good faith must depend on the facts of each particular case and in determining the limit of reasonable courtesy the Court should not lose sight of local conditions.

Mr. Nijar, Counsel for the first respondent in the first application and for the first and second respondents in the second application has however referred to *Lim Kit Siang v. Datuk Seri Dr. Mahathir* [1987] CLJ (Rep) 168 which was also decided by this Court and has urged us to follow the decision of that case which he submitted adopted a liberal approach. In that case this Court viewed the excerpt complained of objectively and dispassionately and came to the conclusion that it was an articulation of executive frustration in not being able to achieve its object in matters where the interference of the Court have been sought to some avail. The Court, however, held that the excerpt complained of did not amount to an attack on the

Courts as to constitute a contempt but only stemmed from a misconception of the role of the Courts. We do not agree that the law of contempt has been changed as a result of the decision of this Court in that case, the facts of which are very different from the case which is before us.

As regards the first application, the applicants had indicated that they did not intend to pursue the matter against Ooi Chan Seong, the chairman of Persatuan Penduduk-Penduduk Kawasan Thean Teik and Kampong Pisang (the second respondent). He was therefore discharged and cautioned by us to be careful in future not to sign any document in a language which he did not understand.

The first respondent in the first application, one S.M. Idris, had issued press release dated 28 April 1987, in his capacity as President of the Consumers' Association of Penang. The applicants have contended that the statement was a great distortion of the decision of the Supreme Court. They have suggested that the statement contained various inferences, namely, that the Supreme Court had acted irresponsibly, had turned a blind eye and condoned the killing of woman and thirdly had sanctioned the land owners disrespect and abuse of the legal process and lastly that the decision was a charter for lawlessness. We have read and studied that press statement in its entirety but are unable to accept that it gave rise to those inferences suggested by the applicants. The language used might have been intemperate but in our view it did not amount to contempt of Court. We have also considered what has been canvassed by Mr. Nijar that in the context of his subsequent conduct urging the Federal Government, the Penang State Government and Members of Parliament on the need to reforming the tenancy laws and/or the need for the enactment of an Act which would provide, *inter alia*, for tenants to be evicted by landlords only after they have obtained a Court order. For reason we have stated we would therefore discharge him too.

In the case of the second application, there was originally four respondents but we were informed by Mr. Abraham, Counsel for the applicants that the application against the fourth respondent, one Khor Kok Peng, had been withdrawn.

We would first proceed to consider the case against Chin Nyuk Soo, the third respondent, who made a speech in Hokkien. It was a long speech and the only part in his speech which has been alleged to amount to contempt was his reference to a Chinese saying that "money can make ghost turn the grinder". The applicants have contended that the inference from the part of the speech suggested that the Supreme Court Judges might have been influenced by financial considerations and were susceptible to corruption. The late Tan Sri Lee Siow Mong was asked by the applicant's Counsel to give his opinion on that phrase. The late Tan Sri Lee had traced the history of that Chinese saying and has stated that it was meant to be innuendo deprecating in nature and having a connotation of corrupt practices. The third respondent had averred in his affidavit that he did not mean that the Supreme Court Judges were corrupt and it was quite clear from what followed after his reference to the Chinese saying when he said "after the Penang High Court judgment the Supreme Court in Kuala Lumpur held a different view over *Poh Sim Siang's* case. They reviewed this case from the legal point ..."

Reading English translation, we are of the view that it is possible for that part of his speech to be interpreted in two ways. One inference would be according to the applicants' contention and the other according to the respondent's version. Bearing in mind that contempt proceedings are serious quasi criminal in nature we are not satisfied that by reason only of that part of the speech the applicants have proved the case against the third respondent beyond reasonable doubt. There is a doubt and the benefit of that doubt is exercised in his favour. Accordingly, we also discharge him.

The position of the first and second respondents, namely, Mr. Mohideen Abdul Kader and Miss Meenakshi Raman, in the second application are different. They are both advocates and solicitors and should know the law. The first respondent applied to give evidence in Court. In his speech he said that the main thrust of his speech at the Penang Chinese Town Hall and criticism of the English Common Law which empowered the landlord to go and take possession of the land occupied by a tenant by using reasonable force without having to go to Court to obtain an order. He had no intention of disparaging the Supreme Court.

Although Miss Meenakshi Raman, the second respondent, had earlier indicated that she was going to give oral evidence, she decided not to do so as her evidence would be the same as that of the first respondent.

We must now refer to the following relevant parts of the first respondent's speech:

> Saya yakin saya tahu bahawa rakyat Thean Teik mahu selesai masallah ini secara aman. Tapi adakah 'Developer' pemaju, tuan tanah mahu selesai ini secara aman? Mr. Poh bila dia tengok bulldozer, dia ingat boleh pergi mahkamah dapat keadilan. *Dia mimpi dia boleh dapat keadilan daripada mahkamah.*
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> Dia pergi ambil 'Order' tahan sama dia Developer jangan masuk. Bicara-bicara bukan satu bulan, II bulan bicara. Banyak saksi keluar. Hakim kasi dia RM300,000 mula-mula. Itu Farlim tidak puashati, *dia 'appeal'. Appeal itu 3 hakim dengar, bukan dia mahu kasi lebih, dia potong sampai RM20,000. Dan dia cakap, dia cakap, dalam Malaysia tuan tanah bila dia sudah kasi notis, dia boleh pergi sendiri tak payah pergi Court. Tak tahu apa pasal kita ada Court? Tak tahu apa pasal kita bayar gaji kasi hakim-hakim.* Dia cakap itu tuan tanah sendiri boleh pergi. Bukan dia satu orang mahu pergi. Tuan tanah mesti bawa samseng-samseng dia masuk dalam rumah. Angkat barang kita boleh buang. Kasi kita keluar dari tanah atau rumah. *Ini undang-undang banyak jahat punya undang-undang ... Siapa saja sewa tanah, sewa office, sewa bilek, semua orang kena ini undang-undang syaitan ini ...*
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> Ini undang-undang kita ada undang-undang sini ada tulis dalam undang-undang, undang-undang tulis. Ini Parliament bikin punya undang-undang. *India pun ada itu macam punya undang-undang. India punya Court banyak tinggi punya Court. Itu Supreme Court.* Dia cakap itu tuan tanah, dia mesti mahu pergi mahkamah, mahu dapat keluar itu perintah baru boleh kasi keluar semua itu orang sewa.*Tapi kita punya hakim 3 orang, banyak pandai punya orang, dia tak mahu ikut. Dia tak mahu itu cara.*
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> (The emphasis are ours).

The applicants say that the inferences are that the Court had acted recklessly and irresponsibly and that it was an abuse of the process of the Court.

There was also a suggestion that the Supreme Court Judges were prejudiced, not gainfully employed and have not discharged or are in dereliction of their judicial duties and irresponsible. There was also the suggestion that our Judges lack maturity, are inferior, incapable and have not kept up with the best standard of the Judges of the Indian Supreme Court.

The second respondent had also issued a speech in Bahasa Malaysia on the same day as follows:

> Seperti, seperti kita ada tengok dahulu, ini undang-undang banyak bodoh *punya undang-undang. Bukan sahaja dia bodoh, dia tak adil*. Ini hakim ada cakap ini macam, dia cakap orang-orang tuan tanah tak payah ikut law. Dia cakap itu boleh pergi tempat kasi ini orang keluar, dia cakap tak payah ikut law ...
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> ...Itu bukan undang-undang. Jadi kita yang jadi lawyer, kita pun ingat apa kita belajar undang-undang? *Buat apa kita mahu hakim-hakim yang dia orang kata pandai-pandai. Tapi dia pandai-pandai macam ini bikin undang-undang bodoh-bodoh.*
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> (The emphasis are ours).

The applicants say that the inferences are that the Supreme Court decision was stupid, meaningless and that the Supreme Court sanctioned the lawlessness and disregard of the legal process. There was also the inference or suggestion that the Supreme Court Judges advocate lawlessness and are reckless and irresponsible.

Mr. Nijar for both the first and second respondents contended that the statements were meant in the public interest and in good faith. He conceded that the language used was not judicious but stated that criticisms could not be contempt. He also stated that the whole decision was not criticised as there were only four issues in it and they only spoke on that relating to self-help. He submitted that an abuse must be distinguished from criticism and that any judgment could be criticised as contrary to law and that criticism was not contempt. He also stated that if a person was performing a public duty he was protected and that speeches here were made *bona fide*. He submitted that the Court should have the magnanimity to excuse intemperate language. He also pointed out that both speakers were using a language to which they are not comfortable with.

We have read and considered the speeches of both the first and second respondents and having regard to those speeches as a whole we cannot say that they have not exceeded the bounds of reasonable courtesy or were made in good faith. As advocates and solicitors they are both officers of the Court and are expected to uphold the dignity of the Court and the respect for the Judges. But they have ridiculed the Supreme Court. We find that the first and second respondents had gone outside the two limits of reasonable courtesy and good faith. The blatant insinuations made by them had scandalised the Supreme Court and brought it into disrepute as they were not within limits of reasonable courtesy and good faith. We find that the applicants have proved their case against them beyond reasonable doubt and we find both of them guilty of contempt of this Court.

Finally we must say that the Court should seriously consider custodial sentence in such cases and hereby warn that in future custodial sentence might be imposed. However, in the circumstances of this case, we would follow the decision of this Court in *Attorney General & Ors. v. Arthur Lee Meng Kuang*, [1987] 1 MLJ 206, (*supra*) and impose a fine of RM5,000 or in default 3 months' imprisonment on the first and second respondents. We also order that the first and second respondents should pay the costs of this application to the applicants.

As regards costs we hereby order that in respect of the first application costs should follow the event. And in respect of the second application costs for the 3rd respondent should follow the event.

Also found at [1990] 1 CLJ 723